

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED & INSPECTED

SEP 17 2002

FCC - MAILROOM

In the Matter of)

Request for Review of the)
Decision of the)
Universal Service Administrator by)The Baltimore Academy)
Baltimore, Maryland)

File No. SLD-235401

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

CC Docket No. 97-21 ✓

ORDER**Adopted: September 12, 2002****Released: September 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by The Baltimore Academy (Baltimore Academy), Baltimore, Maryland.¹ Baltimore Academy seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Baltimore Academy's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny Baltimore Academy's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on February 8, 2002, denying Baltimore Academy's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Baltimore Academy's request for discounts for internal connections, Funding Request Number 551141.⁴ On May 2, 2002, Baltimore Academy filed an appeal of SLD's decision.⁵ On May 3, 2002, SLD issued an

¹ Letter from Veleka Esters, The Baltimore Academy, to Federal Communications Commission, filed June 26, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Veleka Esters, The Baltimore Academy, dated February 8, 2002 (Funding Commitment Decision Letter).

⁴ *Id.*

⁵ Letter from Veleka Esters, The Baltimore Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed May 2, 2002 (Request for Administrator Review).

Administrator's Decision on Appeal indicating that it would not consider Baltimore Academy's appeal because it was received more than 60 days after the February 8, 2002 Funding Commitment Decision Letter was issued.⁶ Baltimore Academy subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.⁷ Documents are considered to be filed with the Commission and SLD only upon receipt.⁸ Because Baltimore Academy's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Baltimore Academy is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.⁹ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁰ Baltimore Academy has not shown good cause for the untimely filing of its initial appeal. Baltimore Academy states that it considered filing its appeal of the Funding Commitment Decision Letter on February 25, 2002 but delayed doing so until it had changed its service provider and the return of its staff from spring break.¹¹ When Baltimore Academy finally submitted the appeal, it was after the deadline.¹²

5. We conclude that Baltimore Academy has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeals to SLD within the established deadline if the applicant wishes its appeals to be considered on the merits.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Veleka Esters, The Baltimore Academy, dated May 3, 2002 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002).

⁸ 47 C.F.R. § 1.7.

⁹ See 47 C.F.R. § 54.720(b).

¹⁰ See 47 C.F.R. § 1.3.

¹¹ Request for Review at 1.

¹² *Id.*

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.¹⁴ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeals to SLD if it wishes its appeals to be considered on the merits. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by The Baltimore Academy, Baltimore, Maryland, on June 26, 2002, and the request to waive the 60-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁴ See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility for understanding all relevant program rules and procedures.").